

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No.: EB-11-SE-030
)	
Horvath Towers, LLC)	Acct No.: 201232100026
)	
)	FRN: 0013457312

ORDER

Adopted: June 13, 2012**Released: June 14, 2012**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission and Horvath Towers, LLC (Horvath). The Consent Decree resolves and terminates the Bureau's investigation into Horvath's compliance with Sections 1.1307(a)(6) and 1.1312(a) of the Commission's rules (Rules)¹ pertaining to the required assessment of the potential effect on the environment of the construction of a wireless communications facility.

2. The Bureau and Horvath have negotiated a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.²

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Horvath possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. §§ 1.1307(a)(6), 1.1312(a).

² We note that in a Public Notice released June 13, 2012, the Wireless Telecommunications Bureau determined, "based on an independent review of the Environmental Assessment" filed by Horvath, that the facility at issue will not significantly impact the environment. *Antenna Structure Registration Service Information*, Public Notice, Report No. CWS-12-61 (June 13, 2012).

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation IS TERMINATED.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Jacqueline L. Stout, President, Horvath Towers, LLC, and Jason Lehman, Vice President and Chief Operating Officer, Horvath Towers, LLC, 312 West Colfax Ave., South Bend, IN 46601, as well as to Barry A. Friedman, Esq., counsel for Horvath Towers, LLC, Thompson Hine LLP, Suite 800, 1920 N Street, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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Horvath Towers, LLC)	Acct No.: 201232100026
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Horvath Towers, LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Sections 1.1307(a)(6) and 1.1312(a) of the Commission's rules¹ pertaining to the required assessment of the potential effect on the environment of the construction of a wireless communications facility.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Horvath is subject by virtue of its business activities, including but not limited to, the Environmental Laws.
 - (f) "Compliance Plan" means the compliance obligations, programs, and procedures described in this Consent Decree at paragraph 9.

¹ 47 C.F.R. §§ 1.1307(a)(6), 1.1312(a).

- (g) “Covered Employees” means all employees and agents of Horvath who perform duties, or supervise, oversee, or manage the performance of duties that relate to Horvath’s responsibilities under the Environmental Rules.
- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Environmental Rules” means Sections 1.1307(a)(6) and 1.1312(a) of the Rules and other Communications Laws implementing the National Environmental Policy Act of 1969, as amended.²
- (j) “Horvath” means Horvath Towers, LLC and its predecessors-in-interest and successors-in-interest.
- (k) “Investigation” means the investigation commenced by the Bureau upon receipt of a referral from the Wireless Telecommunications Bureau regarding Horvath’s possible violation of Sections 1.1307(a)(6) and 1.1312(a) of the Rules.³
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Horvath to implement the Compliance Plan.
- (m) “Parties” means Horvath and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Under the Commission’s rules implementing the National Environmental Policy Act of 1969, as amended (NEPA),⁴ applicants and licensees are required to assess whether proposed facilities may significantly affect the environment, as defined in Section 1.1307 of the Rules.⁵ This obligation expressly applies to facilities for which no pre-construction authorization is required.⁶ For proposed facilities that may have a significant environmental impact, applicants and licensees must prepare and submit to the Commission an Environmental Assessment (EA)⁷ and undergo environmental review by the Commission and any mandatory consultation with expert agencies, prior to initiating construction.⁸

² National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970), as amended (codified at 42 U.S.C. §§ 4321-4347).

³ See 47 C.F.R. §§ 1.1307(a)(6), 1.1312(a).

⁴ See *supra* note 2.

⁵ 47 C.F.R. § 1.1307.

⁶ *Id.* § 1.1312(a) (“In the case of facilities for which no Commission authorization prior to construction is required by the Commission’s rules and regulations, the licensee or applicant shall initially ascertain whether the proposed facility may have a significant environmental impact as defined in § 1.1307 of this part.”).

⁷ *Id.* § 1.1311.

⁸ See *id.* §§ 1.1308, 1.1312(b).

Section 1.1307(a)(6) of the Rules expressly provides that the construction of facilities in a flood plain may significantly effect the environment and therefore require the preparation of an EA.⁹

3. Horvath owns, develops and operates cellular towers for wireless carriers across the United States. On May 9, 2008, Horvath filed with the Commission an Application for Antenna Structure Registration (FCC Form 854) (ASR Application) for a tower located in Partridge, Kansas (Partridge Site).¹⁰ On November 15, 2008, Horvath completed construction of the tower at the Partridge Site. However, Horvath had not yet completed the required pre-construction NEPA review for the Partridge Site facility. Upon completion of its NEPA review, Horvath discovered that one of the guy anchors for the Partridge Site tower was located in a flood plain zone. On December 16, 2008, Horvath filed a modification to its ASR Application to include an EA that disclosed that one guy anchor was located within the flood plain zone.¹¹ The EA concluded that construction of the Partridge Site facility did not have a significant environmental effect.¹² Although Horvath included the EA in its modified ASR Application, the company claims that it “inadvertently and mistakenly” responded “No” to Question 38 of the ASR Application, indicating that an EA was not required.¹³ Horvath filed a second modification to its ASR Application on October 18, 2010 correcting the error.¹⁴ The Commission’s Wireless Telecommunications Bureau (Wireless Bureau) reviewed Horvath’s EA, and concurred that the construction at the Partridge Site did not have a significant environmental effect. The Wireless Bureau subsequently referred this matter to the Bureau for investigation and possible enforcement action. The Bureau and Horvath entered into a tolling agreement to toll the statute of limitations.¹⁵

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** Horvath agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation

⁹ *Id.* § 1.1307(a)(6).

¹⁰ *See* File No. A0593807 (filed May 9, 2008).

¹¹ *See* File No. A0616634 (filed Dec. 16, 2008).

¹² *See id.*

¹³ Memorandum from Barry Friedman, Esq., Thompson Hine, LLP, Counsel for Horvath Towers, LLC, to Ricardo Durham, Senior Deputy Division Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 14, 2011) (on file in EB-11-SE-030).

¹⁴ *See* File No. A0698790 (filed Oct. 18, 2010).

¹⁵ *See, e.g.,* Tolling Agreement Extension, File No. EB-11-SE-030, executed by and between Ricardo M. Durham, Senior Deputy Division Chief, on behalf of, John D. Poutasse, Chief, Spectrum Enforcement Division, Enforcement Bureau, and Jacqueline L. Stout, President, Horvath Towers, LLC (Apr. 6, 2012).

of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Horvath agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Horvath concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not, in the absence of new material evidence, use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Horvath with respect to Horvath's basic qualifications, including its character qualifications, to be a Commission licensee.

8. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Horvath shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Horvath complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Environmental Rules prior to assuming his/her duties.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Horvath agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Environmental Rules, Horvath shall implement the following procedures:

- (a) **Operating Procedures on Environmental Rules.** Within sixty (60) calendar days after the Effective Date, Horvath shall establish Operating Procedures that all Covered Employees must follow to help ensure Horvath's compliance with the Environmental Rules. Horvath's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Horvath performs the required review of the potential effects on the environment of any proposed facilities, including facilities for which no pre-construction authorization is required, prior to the initiation of construction of such proposed facilities. Horvath's Operating Procedures shall incorporate a Compliance Checklist that describes the steps that a Covered Employee must follow to determine whether construction of the proposed facility is categorically excluded from environmental processing under Section 1.1306 of the Rules¹⁶ or may have a significant environmental effect, as defined in Section 1.1307 of the Rules.¹⁷

¹⁶ 47 C.F.R. § 1.1306.

¹⁷ *Id.* § 1.1307.

- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Environmental Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Horvath's compliance with the Environmental Rules. Horvath shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Horvath shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training.** Horvath shall establish and implement a Compliance Training Program on compliance with the Environmental Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Horvath's obligation to report any noncompliance with the Environmental Rules under paragraph 10 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Horvath shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

10. **Reporting Noncompliance.** Horvath shall report any noncompliance with the Environmental Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after its discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Horvath has taken or will take to remedy such noncompliance; (iii) the schedule on which such proposed remedial actions will be taken; and (iv) the steps that Horvath has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Rm. 3-C366, Washington, D.C. 20554, with copies submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and Ricardo Durham at Ricardo.Durham@fcc.gov.

11. **Compliance Reports.** Horvath shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date and twenty-four (24) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Horvath's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Environmental Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Horvath, stating that the Compliance Officer has personal knowledge that Horvath (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 10 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the

Rules¹⁸ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Horvath, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that Horvath has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Horvath has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Rm. 3-C366, Washington, D.C. 20554. All reports shall also be submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

12. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 8 through 11 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

13. **Voluntary Contribution.** Horvath agrees that it will make a voluntary contribution to the United States Treasury in the amount of six thousand five hundred dollars (\$6,500). The payment must be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Horvath must also send electronic notification on the date said payment is made to Nissa Laughner at Nissa.Laughner@fcc.gov, to Ricardo Durham at Ricardo.Durham@fcc.gov, and to Samantha Peoples at Sam.Peoples@fcc.gov.

14. **Waivers.** Horvath waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Horvath shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Horvath nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Horvath shall waive any

¹⁸ *Id.* § 1.16.

statutory right to a trial *de novo*. Horvath hereby agrees to waive any claims it may have under the Equal Access to Justice Act,¹⁹ relating to the matters addressed in this Consent Decree.

15. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Horvath does not expressly consent) that provision will be superseded by such rule or Commission order.

17. **Successors and Assigns**. Horvath agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

18. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

19. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

20. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

21. **Authorized Representative**. The individual signing this Consent Decree on behalf of Horvath represents and warrants that she is authorized by Horvath to execute this Consent Decree and to bind the company to the obligations set forth herein. The FCC signatory represents that she is signing this agreement in her official capacity and that she is authorized to execute this Consent Decree.

¹⁹ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

22. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

John D. Poutasse
Chief
Spectrum Enforcement Division
Enforcement Bureau

Date

Ms. Jacqueline L. Stout
President
Horvath Towers, LLC

Date